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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL 3444-6]

#### Approval and Promulgation of Implementation Plans; Michigan

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Final rule.

**SUMMARY:** The purpose of this notice is to announce final rulemaking action on portions of Michigan's State Implementation Plan (SIP), on which USEPA deferred regulatory action when approving and conditionally approving the Part D Clean Air Act (CAA) requirements contained in the State's 1979 SIP on May 6, 1980, (45 FR 29790). This action approves the regulations submitted to USEPA on April 25, 1979 (effective at the State level on January 18, 1980), concerning: Open burning; continuous emission monitoring (CEM); air pollution episodes; organization, operation and procedures; and hearings. **DATE:** The action is effective January 3, 1989, unless notice is received on or before December 2, 1988, that someone wishes to submit comments.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Ms. Toni Lesser, at (312) 886-6037, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 West Allegan, Lansing, Michigan 48909  
U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

Comments on these proposed rules should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Ms. Toni Lesser, Michigan Regulatory

Specialist, U.S. Environmental Protection Agency, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

**SUPPLEMENTARY INFORMATION:** On May 6, 1980 (45 FR 29790), USEPA published a final rulemaking action approving the State of Michigan's Part D SIP. However, Michigan's submittal of April 25, 1979, contained additional regulations which were not required under the CAA's Part D SIP requirements. Therefore, at the time of USEPA's May 6, 1980, final rulemaking, USEPA decided to defer rulemaking and indicated that a separate rulemaking notice addressing these elements would be prepared.

The State of Michigan submitted the rules which are the subject of this notice on April 29, 1979. These rules are Rule 336.1310 (Open Burning); R336.2101-336.2199 (Continuous Emission Monitoring); R336.2301-336.2308 (Air Pollution Episodes); R336.2601-336.2608 (Organization, Operation and Procedures); and R336.2701-336.2706 (Hearings). These rules have been in effect at the State level since January 18, 1980.

On January 15, 1988, USEPA sent the State of Michigan a letter addressing these rules. In response to USEPA's letter, the State submitted a letter on February 22, 1988, requesting USEPA to continue processing these rules with the exception of the sulfur dioxide compliance date extension rules 336.1501-336.1507.

#### 1. Open Burning

Michigan's Rule 336.1310 limits the open burning of materials. It prohibits open burning of waste, refuse, garbage, or any other waste materials with the five exceptions presented below. These exceptions do not authorize open burning where prohibited by local law or regulation.

(a) Waste disposal of material from one or two-family dwellings where the burning does not violate any other Commission rules.

(b) Structures and other materials used exclusively for fire prevention training if prior approval is obtained from the Commission.

(c) Trees, logs, brush, and stumps in accordance with applicable state and local regulations if the burning is not conducted within a Priority I area as listed in Table 33, a Priority II area as listed in Table 34, nor closer than 1400 feet to an incorporated city or village limit and the burning does not violate any other Commission rule.

(d) Beekeeping equipment and products, including frames, hive bodies, hive covers, combs, wax and honey when burned for bee disease control.

(e) Logs, brush, charcoal, and similar materials for the purpose of food preparation or recreation.

#### Regulatory Action

USEPA approves Michigan's Rule 336.1310 as an acceptable additional element of Michigan's current federally approved SIP. This rule reduces the particulate matter concentrations and other products of combustion throughout the state and it in no way relaxes control requirements contained in the approved Michigan SIP.

#### 2. Continuous Emission Monitoring (CEM)

Under section 110(a)(2)(F) of the CAA, States must submit a plan for the installation of equipment by owners or operators of stationary sources to monitor emissions from these sources. Michigan submitted sixteen rules: 336.2101; 336.2102; 336.2103; 336.2150; 336.2151; 336.2152; 336.2153; 336.2154; 336.2155; 336.2159; 336.2170; 336.2175; 336.2176; 336.2189; 336.2190, and 336.2199 which address the requirements related to CEM. The requirements of these rules are summarized below. USEPA prepared a technical support document (TSD) dated October 1, 1987, which contains an analysis of these CEM rules.

##### Rule 336.2101

Michigan's Rule 336.2101 requires fossil fuel-fired steam generators to install, calibrate, maintain, and operate CEM for opacity, sulfur dioxide, nitrogen oxide, oxygen and carbon dioxide. In addition, it requires all subject sources to begin monitoring and recording within 18 months from the effective date of the rule. Rule 336.2101 is consistent with section 110(a)(2)(F) of the CAA and meets the minimum emission monitoring requirement of 40 CFR Part 51; Appendix P, section 2.1.

##### Rule 336.2102

Michigan's Rule 336.2102 requires continuous SO<sub>2</sub> emission monitoring for sulfuric acid plants having production capacity of more than 300 tons per day. Rule 336.2102 meets the requirements of 40 CFR Part 51; Appendix P, section 2.3.

##### Rule 336.2103

Michigan's Rule 336.2103 requires continuous opacity monitoring for Fluid Bed Catalytic Cracking Regenerators at petroleum refineries. Rule 336.2103 meets the requirements of 40 CFR Part 51; Appendix P, section 2.4.

**Rule 336.2150**

Michigan's Rule 336.2150 contains performance specifications for CEM systems. Rule 336.2150 meets the requirements of 40 CFR Part 51; Appendix P, section 3.1.

**Rule 336.2151**

Michigan's Rule 336.2151 discusses calibration gases for CEM systems. Rule 336.2151 meets the requirements of 40 CFR Part 51; Appendix P, section 3.3.

**Rule 336.2152**

Michigan's Rule 336.2152 deals with cycling time for CEM systems. Rule 336.2152 requires that CEM systems for measuring opacity, complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period. CEM systems for measuring nitrogen, carbon dioxide, oxygen, or SO<sub>2</sub>, shall complete a minimum of one cycle of operation for each successive 15-minute period. Rule 336.2152 meets the requirements of 40 CFR Part 51; Appendix P, section 3.4.

**Rule 336.2153**

Michigan's Rule 336.2153 discusses zero and drift factors for CEM systems. Rule 336.2153 meets the requirements of 40 CFR Part 51; Appendix P, section 3.5.

**Rule 336.2154**

Michigan's Rule 336.2154 discusses instrument span for CEM systems. Rule 336.2154 requires that instrument span be approximately 200 percent of the expected instrument data display output corresponding to the emission standard for the source. Rule 336.2154 meets the requirements of 40 CFR Part 51; Appendix P, section 3.7.

**Rule 336.2155**

Michigan's Rule 336.2155 discusses location of monitors. Rule 336.2155 meets the requirements of 40 CFR Part 51; Appendix P, section 3.8.

**Rule 336.2159**

Michigan's Rule 336.2159 discusses an alternative continuous emission monitoring system. Rule 336.2159 complies with the requirements of 40 CFR Part 51; Appendix P, Section 3.9.

**Rule 336.2170**

Michigan's Rule 336.2170 discusses data reporting and recordkeeping for a CEM system. Rule 336.2170 meets the requirements of 40 CFR Part 51; Appendix P, sections 4.1 to 4.6.

**Rule 336.2175**

Michigan's Rule 336.2175 discusses the data reduction procedure for analyzing

emissions from fossil fuel-fired steam generators. Rule 336.2175 meets the requirements of 40 CFR Part 51; Appendix P, section 5.0.

**Rule 336.2176**

Michigan's Rule 336.2176 discusses data reduction for analyzing emissions from sulfuric acid plants. Rule 336.2176 meets the requirements of 40 CFR Part 51; Appendix P, section 5.1.

**Rule 336.2189**

Michigan's Rule 336.2189 discusses the usage of alternative data reporting or reduction procedures. Rule 336.2189 meets the requirements of 40 CFR Part 51; Appendix P, section 5.2.

**Rule 336.2190**

Michigan's Rule 336.2190 discusses monitoring system malfunctions. Rule 336.2190 meets the requirements of 40 CFR Part 51; Appendix P, section 1.4.

**Rule 336.2199**

Michigan's Rule 336.2199 discusses exemptions from CEM requirements. Rule 336.2199 meets the requirements of 40 CFR Part 51 Appendix P, section 3.2.

**Regulatory Action**

USEPA is approving the State of Michigan's rules 336.2101-336.2199 for CEM, which were submitted on April 29, 1979. USEPA believes that these rules meet the specific requirements and guidelines of section 110(a)(2)(F) of the CAA and the minimum emission monitoring criteria specified in 40 CFR Part 51; Appendix P.

**3. Air Pollution Episodes**

Under 40 CFR 52.11, States are required to submit to USEPA as a SIP revision a plan that provides for public announcement concerning air pollution emergency episodes. Michigan submitted 8 rules, 336.2301-336.2308, which address air pollution episodes.

**Rule 336.2301**

Michigan's Rule 336.2301 defines "air pollution episode" as a condition that may lead to, or result in, the buildup of atmospheric contaminants in the State, or any part thereof, which adversely affect the health of the people.

**Rule 336.2302**

Michigan's Rule 336.2302 defines "air pollution forecast" as a national weather service advisory, or local equivalent, that an atmospheric stagnation condition exists.

**Rule 336.2303**

Michigan's Rule 336.2303 defines "air pollution alert" as a concentration of

contaminants at which control actions begins.

**Rule 336.2304**

Michigan's Rule 336.2304 defines "air pollution warning" as a level which indicates that air quality is continuing to deteriorate and that additional control actions are necessary.

**Rule 336.2305**

Michigan's Rule 336.2305 defines "air pollution emergency" to mean that air quality is continuing to deteriorate to a critical level and that the most stringent control actions are necessary.

**Rule 336.2306**

Michigan's Rule 336.2306 discusses the declaration of air pollution episodes.

**Rule 336.2307**

Michigan's Rule 336.2307 discusses episode emissions abatement programs.

**Rule 336.2308**

Michigan's Rule 336.2308 discusses episode orders. The rule states that when an air pollution episode has been declared, the Commission may order a source of air pollution to put into effect the applicable episode emission abatement program.

**Regulatory Action**

USEPA is approving Rules 336.2301-336.2308 since the regulations conform with the minimum criteria for air pollution emergencies or episodes specified in 40 CFR Part 51; Appendix L and 40 CFR 52.11.

**4. Organization, Operations and Procedures**

Michigan submitted Rules 336.2601-336.2608 which address organization, operation and procedures.

**Rule 336.2601**

Michigan's Rule 336.2601 discusses organizational structure and responsibilities of the air pollution control commission.

**Rule 336.2602**

Michigan's Rule 336.2602 provides general information related to offices and meetings.

**Rule 336.2603**

Michigan's Rule 336.2603 discusses the availability of documents for inspection and copying.

**Rule 336.2604**

Michigan's Rule 336.2604 discusses document inspection and copying procedures as well as tape recording transcriptions.

**Rule 336.2605**

Michigan's Rule 336.2605 discusses various functions related to organizational structures.

**Rule 336.2606**

Michigan's Rule 336.2606 discusses declaratory rulings requests regarding a statute, rule, order, or permit administered by the Michigan Commission.

**Rule 336.2607**

Michigan's Rule 336.2607 discusses consideration and disposition of declaratory rulings requests.

**Rule 336.2608**

Michigan's Rule 336.2608 discusses hearings and informal conferences.

**Regulatory Action**

USEPA is approving Rule 336.2601-336.2608 for incorporation into the Michigan SIP. These are State requirements only and were adopted pursuant to Act 348 of the Michigan Public Acts of 1965.

**5. Hearings**

Michigan submitted Rules 336.2701-336.2706 which outline procedures for public hearings.

**Rule 336.2701**

Michigan's Rule 336.2701 discusses procedures required by Michigan's Administrative Procedures Act.

**Rule 336.2702**

Michigan's Rule 336.2702 discusses the service of notices and orders; as well as appearances at a hearing or proceeding.

**Rule 336.2703**

Michigan's Rule 336.2703 discusses voluntary agreements, performance contracts, stipulations, and consent orders.

**Rule 336.2704**

Michigan's Rule 336.2704 discusses hearings held by hearing commissioners.

**Rule 336.2705**

Michigan's Rule 336.2705 discusses agency files and records used in connection with hearings.

**Rule 336.2706**

Michigan's Rule 336.2706 discusses commission hearings after hearing commissioner hearings.

**Regulatory Action**

USEPA is approving Rules 336.2701-336.2706 for incorporation into the Michigan SIP. These regulations are State and Federal requirements, which

were adopted pursuant to the Michigan Administrative Procedures Act described in section 11 of the Act No. 34 of the Michigan Public Acts of 1965, and section 110(a)(1) of the CAA.

Because USEPA believes today's action to be noncontroversial and routine, we are approving it without prior proposal. This action will become effective January 3, 1989. However, if we receive notice by December 2, 1988, that someone wishes to submit comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. Since this notice contains more than one type of regulation, USEPA requests that commentors identify the exact regulation subject to the comment. USEPA will withdraw rulemaking action and repropose action only on the portions receiving comments.

Under Executive Order 12291, today's action is not "Major". The Office of Management and Budget has exempted this rule from the requirements of section 3, Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this SIP approval action will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307 (b)(2)).

**List of Subjects in 40 CFR Part 52**

Air Pollution Control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Date: August 28, 1988.

Lee M. Thomas,  
Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS****Subpart X—Michigan**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1170 is amended by adding paragraph (c)(85) to read as follows:

**§ 52.1170 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(85) On April 25, 1979, the State of Michigan submitted as revisions to the Air Quality Implementation Plan, Michigan Department of Natural Resources Air Pollution Control Commission General Rules for Open Burning; Continuous Emission Monitoring; Air Pollution Episodes; Organization, Operation and Procedures; and Hearings.

(i) Incorporation by reference.

(A) R 336.1310, Open Burning, effective January 18, 1980.

(B) R 336.2101-3, R 336.2150-5, R 336.336-2159, R 336.2170, R 336.2175-6, R 336.2189-90, and R 336.2199; Continuous Emission Monitoring, effective January 18, 1980.

(C) R 336.2301-8, Air Pollution Episodes, effective January 18, 1980.

(D) R 336.2601-8, Organization, Operating, and Procedures, effective January 18, 1980.

(E) R 336.2701-6, Hearings, effective January 18, 1980.

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**40 CFR Part 52**

[FRL-3467-7]

**Approval and Promulgation of Implementation Plan for State of New Mexico; Good Engineering Practice—Stack Height Regulations**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

**SUMMARY:** EPA today approves a revision to the New Mexico State Implementation Plan (SIP) to incorporate the New Mexico Air Quality Control Regulation (AQCR) 710, Stack Height Requirements. Although the EPA generally approves the New Mexico stack height rules on the grounds that the State satisfies the requirements of 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas* 838 F. 2d 1224 (D.C. Cir. 1988). This SIP revision enables the State to ensure that the degree of emission limitation required for the control of any pollutant under New